

1 BRIAN C. CANNON (Bar No. 193071)
briancannon@quinnemanuel.com
2 QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 Twin Dolphin Drive, 5th Floor
3 Redwood Shores, CA 94065
Telephone: (650)801-5000
4 Facsimile: (650)801-5100

5 RORY S. MILLER (Bar No. 238780)
rorymiller@quinnemanuel.com
6 QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
7 Los Angeles, CA 90017
Telephone: (213) 443-3004
8 Facsimile: (213) 443-3100

9 Attorneys for Defendants
ROCHE MOLECULAR SYSTEMS (RMS)
10 ROCHE DIAGNOSTICS GMBH and
ROCHE DIAGNOSTICS CORP.
11

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14 SAN DIEGO DIVISION

15 TROLL BUSTERS LLC,

16 Plaintiff,

17 vs.

18 ROCHE DIAGNOSTICS GMBH, ROCHE
MOLECULAR SYSTEMS (RMS), ROCHE
19 DIAGNOSTICS CORP. D/B/A ROCHE
APPLIED SCIENCES, EUROGENTEC NORTH
20 AMERICA INC., CLONTECH LABORATORIES
INC., INTEGRATED DNA TECHNOLOGIES
21 (IDT), LIFE TECHNOLOGIES CORP., QIAGEN
NV., THERMO FISHER SCIENTIFIC, INC.,
22 QUANTA BIOSCIENCES, INC., GENE LINK
INC., GENSCRIPT USA INC., EMD
23 CHEMICALS INC., TRILINK
BIOTECHNOLOGIES INC., and CEPHIED,
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Defendants.
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Case No. 11cv0056 IEG WVG

**DEFENDANTS ROCHE MOLECULAR
SYSTEMS AND ROCHE DIAGNOSTICS
CORP.'S RULE 5.1 NOTICE OF
CONSTITUTIONAL CHALLENGE**

1 Defendants Roche Molecular Systems (RMS) and Roche Diagnostics Corporation file this
2 Notice regarding their constitutional challenge to 35 U.S.C. § 292 (the false marking statute),
3 which is set forth in their motion to dismiss the First Amended Complaint, filed on May 4, 2011 in
4 the above-captioned matter.

5 The question raised by Defendants' constitutional challenge is whether 35 U.S.C. § 292
6 violates the Take Care Clause of Article II, § 3 of the United States Constitution by failing to
7 include any of the procedural safeguards that have been held to preserve the constitutionality of
8 other *qui tam* statutes like the False Claims Act, such as the right of the United States to be
9 notified by the relator of a case before a defendant is served, the right to intervene, the right to
10 seek dismissal or settlement of a false marking action over the objection of the relator, and the
11 right to prevent dismissal of the action by the relator.

12
13 DATED: May 4, 2011

Respectfully submitted,

14 QUINN EMANUEL URQUHART & SULLIVAN,
15 LLP

16 By s/ Rory S. Miller
17 Rory S. Miller
18 Attorneys for Roche Molecular Systems (RMS),
19 Roche Diagnostics GmbH and Roche Diagnostics
20 Corp.
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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 4, 2011 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

DATED: May 4, 2011

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

By s/ Rory S. Miller

Rory S. Miller
Attorneys for Roche Molecular Systems (RMS),
Roche Diagnostics GmbH and Roche Diagnostics
Corp.

cc: Eric H. Holder, Jr.
Attorney General of the United States
DOJ Room B-103 – Service of Process
950 Pennsylvania Ave. NW
Washington DC 20004
(via certified mail)

Laura E. Duffy
United States Attorney, Southern District of California
Federal Office Building
880 Front Street, Room 6293
San Diego CA 92101
(via certified mail)